



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2004

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2004-3093

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199615.

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal investigation. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552, 117, and 552.130 of the Government Code. As you do not raise any exception to disclosure of the remaining requested information, we presume that you have released it. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have considered the exceptions you claim and reviewed the submitted information. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

judicial decision” and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you seek to withhold under common-law privacy either is not highly intimate or embarrassing for the purpose of common-law privacy or is of legitimate interest to the public. Therefore, this information may not be withheld under section 552.101 and common-law privacy.

You claim that the submitted information also contains fingerprint information that is subject to sections 560.001, 560.002, and 560.003 of the Government Code.² Section 552.101 also encompasses information made confidential by another statute. Sections 560.001, 560.002, and 560.003 provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) “Governmental body” has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

²We note that Sections 559.001, 559.002, and 559.003 of the Government Code were renumbered as sections 560.001, 560.002, and 560.003 of the Government Code by the 78th Legislature, effective September 1, 2003. See Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(78), 2003 Tex. Sess. Laws 4140, 4144.

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Upon review, we find section 560.002 does not permit the disclosure of the submitted fingerprint information in this instance. Therefore, the department must withhold the marked fingerprint information under section 552.101 in conjunction with section 560.003 of the Government Code.

You assert that the mobile and pager telephone numbers of police officers contained in the submitted information are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin, 2002, no pet.). This office has determined that the statutory predecessor to section 552.108(b) excepts from disclosure “the cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). In that decision, we noted that the purpose of the cellular telephones is to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* at 2. We therefore agree that the department may withhold the officers’ mobile and pager telephone numbers pursuant to section 552.108(b)(1).

You claim that the submitted documents contain information that is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We are unable to determine from the information provided whether the employee at issue is a licensed peace officer. If the employee at issue is a licensed peace officer, the department must withhold the marked information under section 552.117(a)(2). If the employee is not a licensed peace officer, and if the employee elected to keep personal information confidential pursuant to section 552.024 prior to the date the department received the present request, then the department must withhold the marked information under section 552.117(a)(1). If, however, the employee is not a licensed peace officer and did not make a timely election pursuant to section 552.024, the department may not withhold this information under section 552.117.

You also assert that the submitted documents contain information that is subject to section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas motor vehicle information we have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.130 and section 552.101 in conjunction with section 560.003 of the Government Code. The department may be required to withhold the marked information under section 552.117. The department may withhold the marked mobile and pager telephone numbers under section 552.108. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ):

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Peterson".

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 199615

Enc. Submitted documents

c: Ms. Sophie Kim
Assignments Manager
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(w/o enclosures)